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CHIEF JUSTICE

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908

No. 193

JAMES WASHINGTON

Petitioner

STATE OF ARKANSAS

Respondent

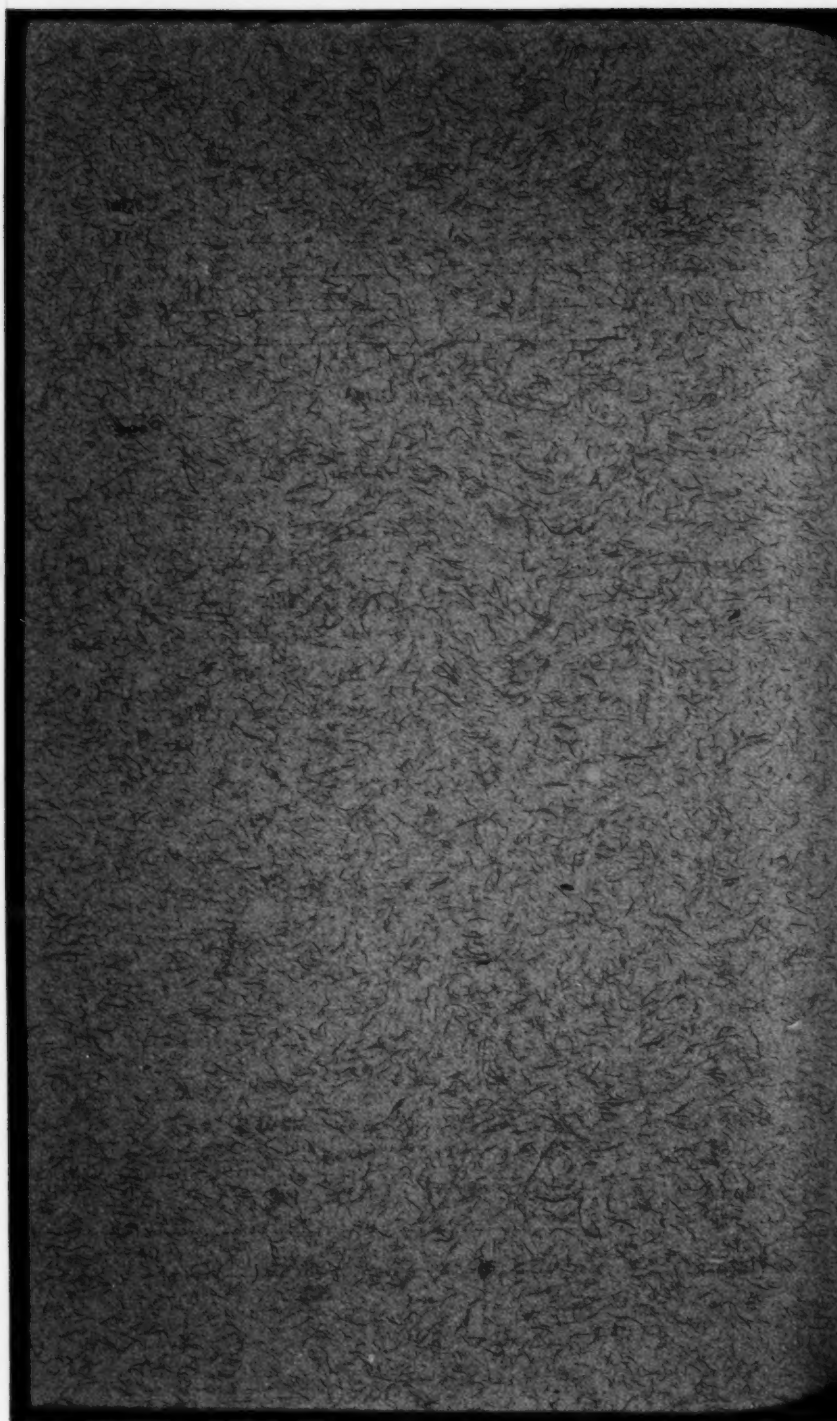
## REPLY OF STATE OF ARKANSAS TO PETITION AND BRIEF OF PETITIONER FOR CERTIORARI TO THE SUPREME COURT OF ARKANSAS

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JAMES WASHINGTON ..... *Petitioner*

v.

STATE OF ARKANSAS ..... *Respondent*

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REPLY OF STATE OF ARKANSAS TO PETITION  
AND BRIEF OF PETITIONER FOR  
CERTIORARI TO THE SUPREME  
COURT OF ARKANSAS

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STATEMENT

Petitioner, in his argument beginning at page 11 of his brief presents three reasons or grounds for his contention in this case. He gives them in his headings under divisions I, II and III. We shall notice these assigned and discussed numbered and set out grounds or reasons in the same order as used by him and set out above and use the headings as also used.

I

*The Use of an Information in Lieu of an Indictment or  
Presentment Is a Denial of Constitutional  
Rights to Due Process and Equal  
Protection of the Laws*

This contention of petitioner as stated above, is earnestly denied and disputed by Respondent. We say and contend this self-same matter or question has been many times adversely decided against the contention made by petitioner. There are many such cases. Some are:

*Penton v. State*, 194 Ark. 503, 109 S.W. 131;

*Smith, et al v. State*, 194 Ark. 1041, 110 S.W. 24;

*Hurtado v. California*, 110 U.S. 516, 28 Law Ed. 232,  
4 S. Ct. 111;

*Gaines v. Washington*, 277 U.S. 81, 72 Law Ed. 793,  
48 S. Ct. 468;

*Bolln v. Nebraska*, 176 U.S. 83, 44 Law Ed. 382,  
20 S. Ct. 287.

Petitioner cites and relies upon the minority opinion in *Adamson v. California*, 332 U.S. 19, 91 Law Ed. (Adv. Op.) 1464, 67 S. Ct. 1672, written by Mr. Justice Black. This is not the controlling opinion in the *Adamson* case but the majority opinion therein controls. The majority opinion does not overrule the holdings of the other cases herein above given but sustains them.

## II

*Systematic Exclusion of all Negroes from Jury Service, on Account of Their Race and Color, for a Period of More Than Thirty Years, is Violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States*

There could be no prejudice to the petitioner as to what had been done the past thirty years if his rights and interests were taken care of in his case. Suppose there had been a systematic exclusion for thirty years but there was no exclusion in the jury in his case. There then could be no prejudice or injury to him. There were three jurors of the negro race upon the panel of the petit jury called in his case. Their names were: V. T. Price, R. D. Daggett and Price Swaizer. They were examined as jurors to try petitioner. The number or order of their examination as jurors to try the case was 7, 10 and 12 (R.28, 30, 33 and 58). There were then negroes upon the panel from which this jury was selected and they were examined. No question as to what had been formerly practiced, if such a contention were true, could possibly affect the rights or interests of petitioner adversely.

## III

*The Adoption of an Arbitrary Quota of Negroes for a Particular Panel, with Consequent Immediate Peremptory Challenge of them, is Evidence of Collusion by State Officials to Evade the Laws and Constitution of the United States*

In a discussion of this heading petitioner in his brief seems to admit there were three negroes upon the panel

challenged. This being true and as before stated and argued, herein above did not prejudice the petitioner. This matter was fully and completely treated and answered by good and sufficient citation of authorities in the opinion of the Arkansas Supreme Court in this case which was written by Mr. Justice Ed F. McFaddin. These authorities, which sustain the holding of the Arkansas Supreme Court, are:

*Akins v. Texas*, 325 U.S. 398, 89 Law Ed. 1692,  
65 S. Ct. 1276;

*Virginia v. Rives*, 100 U.S. 313, 25 Law Ed. 667;

*Thomas v. Texas*, 212 U.S. 272, 53 Law Ed. 513,  
29 S. Ct. 393;

*Hill v. Texas*, 316 U.S. 404, 86 Law Ed. 1562,  
62 S. Ct. 1159;

*Norris v. Alabama*, 294 U.S. 587, 79 Law Ed. 1074,  
55 S. Ct. 579;

*Smith v. Texas*, 311 U.S. 128, 85 Law Ed. 84, 61  
S. Ct. 164;

*State v. Koritz*, 277 N.C. 552, 43 S.E. 77.

Certiorari by the United States Supreme Court was denied and the opinion is found in 332 U.S. 767, 92 Law Ed. 22, 76 S. Ct. 80, (Adv. Sheets).

## CONCLUSION

We earnestly submit that there is no ground or reason for this Court to grant the relief sought by petitioner nor in any wise to disturb the holding of the Arkansas Supreme Court herein.

Respectfully submitted

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